

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:09-CR-00374-F-1
No. 5:12-CV-00163-F

VICARA KENARIE DAVIS,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

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O R D E R

This matter is before the court on the Memorandum and Recommendation (“M&R”) [DE-41] of United States Magistrate Judge Kimberly A. Swank, regarding Vicara Kenarie Davis’ Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 [DE-30].

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This court is charged with making a *de novo* determination of those portions of the recommendation to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge’s recommendation, or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b)(1). In the absence of a timely-filed objection, a district court need not conduct a *de novo* review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

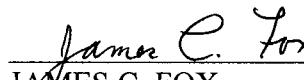
On February 20, 2015, the Magistrate Judge issued a M&R recommending that Davis’ section 2255 motion [DE-30] be denied and the Government’s motion to dismiss [DE-33] be

allowed. [DE-41] at 3. The Magistrate Judge advised the parties of the procedures and requirements for filing objections to the M&R and the consequences if they failed to do so. *Id.* at 3-4. Davis has filed no objections, and the time for doing so expired on March 6, 2015.

Upon careful review of the M&R and of the record generally, and having found no clear error, the court hereby ADOPTS the recommendation of the Magistrate Judge. It is therefore ORDERED that the Government's Motion to Dismiss [DE-33] is ALLOWED, and Davis' section 2255 motion [DE-30] is DISMISSED. The court has reviewed the arguments raised, and in light of the applicable standard, a certificate of appealability is DENIED.

SO ORDERED.

This, the 9th day of March, 2015.



JAMES C. FOX
Senior United States District Judge